

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROJELIO D. LARA,

Plaintiff, **Case No. 08-13455**
vs. **HONORABLE DENISE PAGE HOOD**

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

/

ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge Charles E. Binder's Report and Recommendation, dated April 13, 2009. Neither Defendant nor Plaintiff filed any objections to the Magistrate Judge's Report and Recommendation.

Judicial review of the Commissioner's decision is limited in scope to determining whether the findings of fact made by the Commissioner are supported by substantial evidence, and deciding whether the Commissioner employed the proper legal criteria in reaching his or her conclusion. *Garner v. Heckler*, 745 F. 2d 383 (6th Cir. 1984). The credibility findings of an administrative law judge ("ALJ") must not be discarded lightly and should be accorded great deference. *Hardaway v. Secretary of Health and Human Services*, 823 F. 2d 922, 928 (6th Cir. 1987). A district court's review of an ALJ's decision is not *de novo* review. The district court may not resolve conflicts in the evidence nor decide questions of credibility. *Garner*, 745 F. 2d at 397. The decision of the Commissioner must be upheld if supported by substantial evidence, even if the record might support

a contrary decision. *Smith v. Secretary of HHS*, 893 F. 2d 106, 108 (6th Cir. 1989). An administrative decision must be affirmed if supported by substantial evidence, even if the Court might arrive at a different conclusion. *Mullen v. Bowen*, 800 F. 2d 535, 545 (6th Cir. 1986) (quoting *Baker v. Heckler*, 730 F. 2d 1147, 1150 (8th Cir. 1984)).

The Magistrate Judge recommended that Defendant's Motion for Summary Judgment be granted and Plaintiff's Motion for Summary Judgment be denied. The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion for the proper reasons. The Court agrees with the Magistrate Judge that, while the ALJ did not give Plaintiff's treating physician, Dr. Kevin Snyder's, opinion controlling weight, the ALJ did consider Dr. Snyder's opinions given in November 2004 and January 2008, but found that Dr. Snyder's opinions were inconsistent with other substantial evidence in the record, including Plaintiff's own testimony at the hearing. The Court also agrees with the Magistrate Judge that the ALJ's findings are consistent with the vocational expert's opinions, which came in response to proper hypothetical questions, which reflected Plaintiff's physical limitations and the medical record evidence of Plaintiff's physicians, as well as the daily activities Plaintiff testified to at the hearing. The Court agrees that the ALJ's decision (which became the final decision of the Commissioner) is supported by substantial evidence and therefore reversal of the decision is unwarranted.

Accordingly,

IT IS ORDERED that Magistrate Judge Charles E. Binder's Report and Recommendation [Docket No. 15, filed April 13, 2009] is ACCEPTED and ADOPTED.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [Docket No. 14, filed on March 17, 2009] is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [**Docket No. 9, filed on December 18, 2008**] is DENIED.

IT IS FURTHER ORDERED that this cause of action is dismissed.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: May 27, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 27, 2009, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager